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No. 75-314

In the Supreme Court of the United States

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WILLIS W. RITTER, PETITIONER

v.

THOMAS S. KLEPPE, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE SECRETARY OF THE INTERIOR IN OPPOSITION

ROBERT H. BORK,
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Department of Justice,
Washington, D.C. 20530.

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Petitioner is the owner of land on the Snake River in Idaho acquired through mesne conveyances deriving from federal patents (Pet. App. A 2a). In the river, parallel to petitioner's land, are three small islands which were not shown in the original surveyor's notes or on the survey plat in connection with petitioner's patent of the riparian property (*id.* at 1a–4a). In 1955 the Department of Interior surveyed the islands and later made known that they were public lands of the United States that the Department intended to convey to the State of Idaho (*id.* at 3a–4a).

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Petitioner then brought an administrative action under the Color of Title Act, 45 Stat. 1069, as amended, 43 U.S.C. 1068, which permits persons having possessed public land in good faith and under color of title for more than 20 years to receive patents to the land. The Department of Interior found that petitioner did not qualify for a patent under the provisions of the Act (Pet. Apps. C, D and E). Petitioner then brought this action to compel the Secretary of the Interior to patent the islands to him, or alternatively, for the court to quiet his title to the islands (Pet. App. A 2a–4a).

The district court found that the islands were separated from petitioner's land by the flow of a small stream entering the river and not by the main flow of the river, and held that they are part of his patented land (Pet. App. B 1b–7b). The court of appeals reversed in an opinion upon which we rely (Pet. App. A 1a to 20a–3). It held that the case was governed by this Court's decision in *Scott* v. *Lattig,* 227 U.S. 229; and that here, as in *Scott* v. *Lattig,* the absence of reference to the islands in the survey or survey notes, and the exact description of the land patented including its precise acreage but excluding the islands, left no doubt that the islands were not conveyed by the United States to petitioner's predecessors in title (Pet. App. A 12a–15a). The court rejected the district court's finding of fact regarding the location of the islands, and held that the islands were in the main stream of

the river (Pet. App. A 15a to 20a–3). It also affirmed the Secretary's decision under the Color of Title Act (Pet. App. A 20a).

1. The decision of the court of appeals, contrary to petitioner's contention (Pet. 2–3, 24–34), creates no new legal precedent, but merely applies existing law to the facts of this case. The decision in regard to ownership of the islands follows the decision of this Court in *Scott* v. *Lattig, supra,* which involved similar islands in the same river (see Pet. App. A 12a–15a). The essential dispute between the parties concerns issues of fact, which have been thoroughly reviewed by the court of appeals (Pet. App. A 16a–20a) and do not merit further review.

Railroad Co. v. *Schurmeir,* 7 Wall., 272, relied upon by petitioner (Pet. 17–24), is not in conflict with the decision below. In *Schurmeir* the Court held that the actual bank of the Mississippi River, and not a meander line shown on a survey, was the boundary established by the patent in question (7 Wall. at 286). Here the islands in question are beyond the bank of the river. See *Scott* v. *Lattig, supra,* 227 U.S. at 242–243. See also *Texas* v. *Louisiana,* 410 U.S. 702, 713–714.

2. Petitioner's argument (Pet. 34–36) that the Secretary of Interior should have granted him a patent under the Color of Title Act, was also properly rejected by the court of appeals (Pet. App. A 20a). Petitioner's title derives purely from federal patents. No deed in his chain of title purports to grant more

than what was patented (Pet. App. E 3e), and, as indicated above, the islands are not included in his patents. Petitioner essentially seeks title by adverse possession, which is not permitted against the United States. *Utah Power and Light Co.* v. *United States,* 243 U.S. 389.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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